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October 12, 2004

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OCT 12 2004

Federal Communications Commission
Office of Secretary

Ms. Marlene H. Dortch
Office of the Secretary
Federal Communications Commission
445 123th Street, SW
Washington, DC 20554

Re: In the Matter of Amendment of Section 73.606(b), Table of
Allotments, Television Broadcast Stations, and Section
73.622(b), Table of Allotments Digital Television Broadcast
Stations (Columbia and Edenton, North Carolina)
MB Docket No. 04-289
RM-10802

Dear Ms. Dortch:

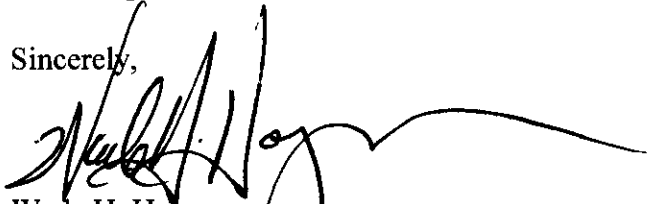
Enclosed, on behalf of The University of North Carolina, are the original and four copies of Reply Comments, together with five copies of Annexes, for filing in the above-referenced matter.

If any questions should arise during the course of your consideration of this matter, it is respectfully requested that you communicate with the undersigned.

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Sincerely,


Wade H. Hargrove
Counsel to The University of North Carolina

Enclosures

**Before the
Federal Communications Commission
Washington, D.C. 20554**

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OCT 12 2004

Federal Communications Commission
Office of Secretary

In the Matter of)
)
Amendment of Section 73.606(b),) MB Docket No. 04-289
Table of Allotments,) RM-10802
Television Broadcast Stations, and)
Section 73.622(b), Table of Allotments)
Digital Television Broadcast Stations)
(Columbia and Edenton, North Carolina))

To: Chief, Video Division
Media Bureau

**REPLY COMMENTS OF
THE UNIVERSITY OF NORTH CAROLINA**

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Summary

Hampton Roads, licensee of noncommercial Television Station WHRO-TV, Hampton-Norfolk, Virginia, filed Comments opposing the Petition, arguing that redesignation of Edenton as WUND's community of license would cause detrimental competition to WHRO-TV for viewers and financial support and that the Petition is otherwise "inconsistent" with the Commission's channel allotment policies. Hampton Roads' arguments are not grounded on sound law, reasoning, or policy, and, therefore, they must be rejected. Grant of the Petition is justified, among other reasons, by the strong public support for the Petition, as the Town of Columbia, Tyrrell County (the county in which Columbia is located), numerous other nearby towns and other county elected officials, and over 1000 area citizens have filed comments in support of the Petition.

It is unseemly at best for Hampton Roads, a publicly supported, noncommercial television station, to attempt to use the Commission's processes to deprive the public—and, in particular, the citizens of North Carolina—of satellite access to additional noncommercial television programming on the ground that the addition of WUND by satellite will "siphon" viewers and funding from WHRO-TV and "undermine" its operation. There are no facts of record of any kind, to support Hampton Roads' argument, and, the Commission has clearly stated that such competitive considerations are not permissible in an allotment proceeding. Moreover, it is contradictory for Hampton Roads to argue, on the one hand, that the public interest benefits of satellite delivery of WUND are too "speculative" to consider while arguing, on the other hand, that local viewers will find WUND's noncommercial programming so compelling that they will watch and support WUND and not WHRO-TV. Hampton Roads' assertions about the desirability of WUND's programming only serve to confirm and validate the public interest in providing access to greater viewer choices

and, in particular, diverse noncommercial programming. Plainly, satellite viewers in the Norfolk DMA and, in particular, those in the Nine County Area that cannot now receive WUND, their state-supported noncommercial broadcast service, by satellite, would benefit by the addition of WUND's North Carolina-focused programming.

Hampton Roads argues that the Petition would result in the removal of Columbia's sole television transmission service. But, of course, the Commission will allow the removal of a sole transmission service where there are sufficient public interest factors to offset the expectation of continued service. Hampton Roads ignores this principle and resorts, instead, to a wooden, rather than flexible, application of the Commission's allotment criteria.

The people of the Town of Columbia and Tyrrell County (where Columbia is located) believe that grant of the Petition would be beneficial to the surrounding area and, for that reason, actively support the Petition. Specifically, the Tyrrell County Board of Commissioners supports grant of the Petition, stating that it "*do[es] not view this proposed change . . . as an abandonment in any way of service to the citizens of Columbia or Tyrrell County*" (emphases added). Moreover, the Board observed that grant of the Petition

will assure that thousands of citizens in our neighboring northeast counties will have access to UNC-TV network programming. This programming, much of which consists of news, public affairs, cultural and educational programming about North Carolina, is of great interest and importance to our northeast region and the citizens of the region.

The Commissioners concluded:

We think the change will further our regional efforts at economic development and make our region an even more attractive area in which to live and work.

The Town of Columbia has also adopted a Resolution supporting the Petition. In recognition that Columbia's interests are closely linked to the interests and welfare of the citizens in the surrounding rural area, Columbia's Board of Aldermen observed:

[N]o Town prospers when its leaders disregard the welfare and needs of the larger community surrounding and outside the Town's boundaries.

The Resolution added that thousands of viewers in northeastern North Carolina would "substantially benefit" from satellite reception of the "excellent programs broadcast by WUND for adults and children alike." The Aldermen supported the Petition "for the betterment of all citizens."

These expressions of support are echoed by the previously filed letters of support from the County Commissions of Currituck, Dare, Pasquotank, and Perquimans Counties, and letters from the Town of Edenton and the County Managers from Gates and Hertford Counties as well as the subsequently filed letter of the County Manager of Chowan County (where Edenton is located).

This unqualified support of the Petition from the Columbia, Tyrrell County, and surrounding counties' governing bodies is in addition to the *1000-plus* letters that area residents have submitted to the Commission supporting the Petition. Surely, these local residents and their duly-elected governing officials are in a better position to assess the public interest benefits of the Petition than is Hampton Roads, an out-of-state station trying to preserve its current monopoly noncommercial television service status.

Furthermore, Hampton Roads' own engineering data help to demonstrate that the redesignation of WUND's community of license to Edenton will result in a preferential arrangement of allotments by providing the Norfolk and Greenville markets with an equal number of noncommercial educational television allotments and bringing the total noncommercial television

services more nearly into line with the Commission's preferred 25% benchmark of noncommercial television channels.

Finally, Hampton Roads' argument on "communities" ignores the real issues and public interest considerations and argues semantics over the proper nomenclature for the rural counties around the Albemarle Sound. Many of the same issues—state government, politics and policy, transportation, economy, farming, infrastructure, natural disasters—affect all citizens in the greater Albemarle Sound Region similarly, which creates a unity and community of interest that pervades the entire region. Entities, including local governments, located in the counties of Tyrrell and Chowan and in both Edenton and Columbia, consider themselves to be part of the same region for, at a minimum, economic, cultural, and tourism purposes. Thus, the Albemarle Sound Region is a cohesive, unitary region, which can be viewed as a single community for allotment purposes.

In short, the public interest question is: Does the fact that grant of the Petition would enable thousands of satellite customers in the Nine County Area of northeastern North Carolina to receive by satellite their state funded and public supported noncommercial television broadcast network, in these circumstances, overcome the loss, for allotment purposes, of Columbia's sole transmission service? The answer is "yes" because:

- ▶ Grant of the Petition will allow, at present, approximately 10,000 households in northeastern North Carolina who are satellite subscribers and North Carolina taxpayers to receive UNC-TV's state-funded noncommercial television programming otherwise unavailable by satellite.
- ▶ This is a rural area—many homes are beyond the reach of cable—and it is unfair to deprive these citizens of access to *their* UNC programming by satellite.
- ▶ WUND operates as a satellite station rebroadcasting UNC-TV's statewide noncommercial educational network. WUND has no studios or local

program origination facilities in Columbia or Tyrrell County and, accordingly, the proposed redesignation of WUND's community of license will have no effect on WUND's current operations and will result in no loss of service or program origination facilities in Columbia or Tyrrell County.

- ▶ The local governing bodies of Columbia and Tyrrell Counties recognize that the Petition will not result in any "real world" loss of service or facilities and have concluded that because (in their words) it would "further regional efforts at economic development an make our region an even more attractive area in which to live and work" local citizens will "substantially benefit" by Commission grant of the Petition.
- ▶ The letters of more than 1,000 local citizens document the need for and strong public interest in the delivery of UNC-TV's programming via satellite in Nine County Area.

Thus, the public interest benefits of the Petition are real, compelling, and unique and are more than sufficient to overcome a presumption against the loss of sole transmission service.

Moreover, the Petition will also result in a preferential arrangements of allotments under the Commission's long-standing allotment policies because:

- ▶ The Greenville DMA currently has more transmission services than the Norfolk DMA, the substantially larger market.
- ▶ Reallotment to Edenton will better promote the Commission's 25% benchmark for noncommercial television allotments in each market.
- ▶ Reallotment to Edenton will promote the more widespread geographic distribution of allotments, particularly noncommercial television allotments.
- ▶ Grant of the Petition will reallot WUND's community of license from one rural community in northeastern North Carolina (population 819) to another, larger, rural community in northeastern North Carolina (population 5,394).

* * *

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Amendment of Section 73.606(b),)	MB Docket No. 04-289
Table of Allotments,)	RM-10802
Television Broadcast Stations, and)	
Section 73.622(b), Table of Allotments)	
Digital Television Broadcast Stations)	
(Columbia and Edenton, North Carolina))	

To: Chief, Video Division
Media Bureau

**REPLY COMMENTS OF
THE UNIVERSITY OF NORTH CAROLINA**

The University of North Carolina ("UNC"), licensee of noncommercial Television Stations WUND-TV, Channel 2, and WUND-DT, Channel 20, Columbia, North Carolina (collectively, "WUND"), submits these Reply Comments in support of the above-referenced Petition for Rule Making to redesignate WUND's community of license from Columbia to nearby Edenton, North Carolina (the "Petition").

Hampton Roads Educational Telecommunications Association, Inc. ("Hampton Roads"), licensee of noncommercial Television Station WHRO-TV, Hampton-Norfolk, Virginia ("WHRO-TV"), filed Comments in opposition to the Petition. Hampton Roads argues (i) the redesignation of Edenton as the community of license would entitle WUND to satellite carriage in the Norfolk-Portsmouth-Newport News DMA ("Norfolk DMA"), and, as a result, WHRO-TV,

which is located in that DMA, would experience competition for viewers and financial support; (ii) the public interest benefits of the redesignation are too “speculative” to warrant consideration; (iii) the redesignation would deprive Columbia of its only local transmission service; and (iv) the Petition is, therefore, “inconsistent” with the Commission’s channel allotment policies. Hampton Roads’ factual assertions are unsupported, and the legal arguments on which it relies do not accurately reflect the holdings of the cases it has cited nor the Commission’s long-standing channel allotment priorities and policies. Accordingly, Hampton Roads’ objections to the Petition should be rejected.¹

A. Hampton Roads’ Financial Argument Is Not A Valid Consideration In A Channel Allotment Proceeding

It is unseemly at best, inappropriate at worst, for Hampton Roads, a publicly supported, noncommercial television broadcast station, to attempt to use the Commission’s processes to deprive the public—and, in particular, the citizens of North Carolina—of access to additional local noncommercial television broadcast programming on the ground that the addition of WUND by satellite will “siphon” viewers and funding from WHRO-TV and “undermine” its operation. The argument that WUND will attract satellite viewers at WHRO-TV’s expense is a continuing theme throughout Hampton Roads’ Comments.²

¹ Hampton Roads’ unsupported factual allegations should be stricken from the record as they are not properly verified or otherwise supported by public records. *See, e.g., In re Major League Baseball and the San Francisco Baseball Club, Petition for Forfeiture*, Memorandum Opinion and Order, 50 Rad. Reg. 2d (P & F) 582 (1981), ¶ 9 n.8 (“We will not take cognizance of [two parties’] unsupported factual allegations, and [we] limit our notice to matters of public record.”).

² *See* Comments of Hampton Roads, at 8 ((mis)characterizing UNC as “desir[ing] to poach on the larger Tidewater/Hampton Roads market”); *id.* at 10 ((mis)characterizing UNC’s proposal as (continued...))

There is absolutely no evidence, and there are no facts of record of any kind, to support Hampton Roads' financial and viewer defection argument.³ Thus, there is no basis on which the Commission can make any findings or reach any conclusions on the argument.⁴

Moreover, it is contradictory for Hampton Roads to argue, on the one hand, that the public interest benefits of satellite delivery of WUND are too "speculative" to consider while arguing, on the other hand, that local viewers will find WUND's noncommercial programming so compelling that they will watch and support WUND and not WHRO-TV. Indeed, if the Commission's public interest goals are advanced (and they are) by providing the public with greater viewer choices and with diverse noncommercial television programming, then Hampton Roads' assertions confirm and

²(...continued)

"a grab for additional viewers (and attendant fundraising dollars) in the Tidewater Market").

³ In fact, at least one study has shown that "a reduction in the number of viewing hours of noncommercial stations does not imply necessarily a reduction in viewer contributions or revenues for those stations" and that "audience size is not the sole determinant of revenues for noncommercial stations." *Cable Television Syndicated Program Exclusivity Rules; Inquiry into the Economic Relationship Between Television Broadcasting and Cable Television*, Report and Order, 79 FCC 2d 663 (1980), Appendix C, "A Case Study Analysis of Noncommercial Television Stations in Grandfathered Markets," at ¶¶ 1, 12.

⁴ To the contrary, in an analogous context, the Commission has observed that "no reason or evidence . . . suggest[s] that viewer contributions to local non-commercial stations will decrease because of the importation of distant signals." *Cable Television Syndicated Program Exclusivity Rules; Inquiry into the Economic Relationship Between Television Broadcasting and Cable Television*, Report and Order, 79 FCC 2d 663 (1980), Appendix C, "A Case Study Analysis of Non-Commercial Television Stations in Grandfathered Markets," at ¶ 6. The Commission did consider, and reject outright, arguments from commercial broadcasters that it is unfair for noncommercial television stations to "compete" with commercial stations for corporate underwriting, *Commission Policy Concerning the Noncommercial Nature of Educational Broadcast Stations*, First Report and Notice of Proposed Rulemaking, 69 FCC 2d 200 (1978), ¶ 36. The same logic would apply, with equal force, to competition for funds among noncommercial stations.

validate the public interest benefits of the Petition. If Hampton Roads' viewer loyalty is so fragile that the introduction by satellite of one additional noncommercial broadcast service would "undermine" its operation, Hampton Roads should reassess the quality of its service. Hampton Roads' apprehension about the lack of WHRO-TV's viewer loyalty speaks volumes about its own service as well as the appeal WUND's programming will have for local satellite viewers and, in particular, those in northeastern North Carolina.

UNC wishes Hampton Roads and WHRO-TV every success and has no desire to "undermine" WHRO-TV's funding or operations. It is not only in the public interest, but it is also in the larger interest of public broadcasting to provide viewers with diverse sources of noncommercial programming. Plainly, satellite viewers in the Norfolk DMA and, in particular, those in the nine rural counties in northeastern North Carolina that cannot now receive WUND by satellite (the "Nine County Area"), would benefit by the addition of WUND's North Carolina-focused noncommercial programming. For UNC to ignore these viewers—approximately 10,000 households at the moment and increasing each day—would be inconsistent with UNC's state statutory mandate to provide its noncommercial television broadcast service to as many North Carolinians as possible. These satellite viewers represent approximately 15% of the households in the Nine County Area—this is not an insignificant number. The purpose of UNC's Petition is to secure authority for WUND to be delivered by satellite to the satellite household subscribers; it is not UNC's purpose or desire, as Hampton Roads wrongly asserts, to siphon viewers or funding from WHRO-TV.

The following is just one specific example of the type of North Carolina-specific programming Virginia-based Hampton Roads seeks to deny North Carolina citizens. On

September 27, 2004, UNC-TV produced and aired live a debate, moderated by Carl Kasell, between the two leading candidates in North Carolina for election to the U.S. Senate. UNC-TV rebroadcast this debate on three subsequent occasions. This will be the only televised debate between these two U.S. Senatorial candidates, so it is the only opportunity for North Carolina satellite subscribers to hear an open and live exchange of views between these candidates. Similarly, UNC-TV is airing extensive coverage of the North Carolina gubernatorial election as well as other North Carolina elections. *See Exhibit 7* (summary of political programming).⁵ If Hampton Roads should prevail, North Carolina citizens (and voters) in the Nine County Area who are satellite subscribers would be denied access to this important programming by satellite and, instead, would be relegated to WHRO-TV's coverage of the candidates for public office in Virginia. Plainly, this result would be contrary to the public interest.

Hampton Roads' concern about additional competition for viewers and funding is, of course, not a permissible legal consideration in an allotment proceeding. In *Anchorage-Seward*,⁶ a petitioner proposed reallocation of a noncommercial channel from Seward, Alaska, to Anchorage, Alaska, resulting in a second noncommercial allotment for Anchorage. A would-be competing noncommercial station argued against the proposal on the grounds that "two noncommercial

⁵ The Exhibit numbering is continued from UNC's Comments.

⁶ *Amendment of Section 73.606(b), Table of Allotments, Television Broadcast Stations (Anchorage, Palmer and Seward, Alaska)*, Report and Order, 5 FCC Rcd 7570 (1990) ("*Anchorage-Seward*").

operators would be forced to compete intensely for funds from the viewing public . . . [and] that sort of competition could be devastating.”⁷ The Commission flatly rejected the argument:

Initially, we turn to [the competitor’s] argument that a second noncommercial station would cause economic harm to [the competitor’s station]. Not only is that allegation unsupported, *it is not a valid consideration at the rule making stage* or at the application stage.⁸

The Commission proceeded to grant the proposed reallocation of the second noncommercial channel to Anchorage.

Similarly, in *Clermont-Cocoa*,⁹ petitioners proposed to exchange, through reallocation, a noncommercial channel in one community with a commercial channel in another. A competing noncommercial station objected, arguing that the channel exchange was likely to cause it to lose tens of thousands of viewers and to experience a decrease in membership growth, resulting in a reduction in quality and variety of programming, and that a bidding war for programming would flow from the “regional competition” of the two noncommercial stations. In fact, to the contrary, the Commission held that this argument *was not* a valid consideration in the allotment proceeding. In granting the channel exchange and reallocation, the Commission observed:

We will not deny the exchange on the grounds that, following approval, [the petitioner’s noncommercial station’s] service area will substantially overlap with [the competitor’s noncommercial station’s] service area. While [the competitor] offers statistics suggesting that it will suffer a significant loss of viewers, it does not describe the basis for this claim. Furthermore, even if [the competitor] runs the

⁷ *Anchorage-Seward*, at ¶ 3.

⁸ *Anchorage-Seward*, at ¶ 14 (emphasis added).

⁹ *Amendment of Section 73.606(b), Table of Allotments, Television Broadcast Stations (Clermont and Cocoa, Florida)*, Report and Order, 4 FCC Rcd 8320 (1989) (“*Clermont-Cocoa*”).

risk of losing viewers, we cannot prevent a channel expansion solely to protect a broadcaster from competition.¹⁰

Consistent with *Clermont-Cocoa* and *Anchorage-Seward*, Hampton Roads' concern about competition for viewers from WUND cannot, as a matter of law, become a factor in the Commission's calculus. UNC's research has revealed no case—and Hampton Roads cites none—in which the Commission has suppressed viewer programming choices to insulate and protect the financial underwriting of an existing monopoly provider of noncommercial television programming.

Because Hampton Roads' arguments about noncommercial programming and fund raising competition from WUND are irrelevant and immaterial, they cannot serve as a basis for denial of the Petition.

B. Hampton Roads Misconstrues The Commission's Channel Allotment Case Law And Policy

Hampton Roads argues that the Petition would remove Columbia's only "local transmission service." It is true, of course, that the redesignation of Edenton, rather than Columbia, as WUND's community of license would result in removal, in a legal sense, of Columbia as the community of license. But, as UNC pointed out in its Petition and Comments, the Commission will allow the removal of a sole transmission service where there are sufficient public interest factors to offset the expectation of continued service. Hampton Roads ignores this principle and resorts, instead, to a wooden, rather than flexible, application of the Commission's allotment criteria.

Moreover, the allotment is purely a "regulatory" change—it will not, in this circumstance, result in a loss by the citizens of Columbia of any reception service or local origination facilities

¹⁰ *Clermont-Cocoa*, at ¶ 20 (citing *Policies Regarding Detrimental Effects of Proposed New Broadcast Stations on Existing Stations*, 3 FCC Rcd 638 (1988)).

since WUND does not now have, and does not intend in the future to have, local studios or program origination facilities in Columbia—nor in Edenton for that matter. WUND is a satellite station—a fact Hampton Roads ignores—whose function is to rebroadcast the programming of the UNC-TV noncommercial television network. This is a critical and distinguishing fact in this proceeding, as, contrary to the implications of Hampton Roads’ arguments, it is not as though UNC proposes to shut down WUND’s program origination studios in Columbia and move them to Edenton.

The people of the Town of Columbia and Tyrrell County in which Columbia is located understand what the case is about. Both—as discussed more fully below—support UNC’s Petition. Local, duly-elected government officials in Columbia and Tyrrell County understand fully that the Petition would not result in *any* loss of service in Columbia and Tyrrell County.

Hampton Roads’ Comments not only ignore these facts, but also go on to misstate and misapply the Commission’s channel allotment case law and channel allotment policies.

1. Hampton Roads Miscontrues the *Bessemer* Case

In support of its argument, Hampton Roads relies on the *Bessemer* case.¹¹ Hampton Roads states:

For example, in the *Bessemer* case, the Commission dealt with nearly the same situation as presented by UNC’s petition. There, the Commission denied the request of a licensee seeking a change to its community of license while leaving its transmission tower and studio in the same place. The Commission stated in unambiguous terms that the community at issue in *Bessemer* possessed “a legitimate expectation of continued local transmission service.”¹²

¹¹ *Amendment of Section 73.606(b), Table of Allotments, TV Broadcast Stations (Bessemer and Tuscaloosa, Alabama)*, Report and Order, 5 FCC Rcd 669 (1990) (“*Bessemer*”).

¹² Comments of Hampton Roads, at 4 (footnote and emphasis omitted) (quoting *Bessemer*, (continued...))

In fact, *Bessemer* did not, as Hampton Roads contends, deal with “nearly the same situation” as UNC’s Petition. (For starters, it did not deal *at all* with the removal of a sole transmission service.) Consideration of the facts in *Bessemer*, however, does demonstrate why the “expectation of continued local transmission service” *is not* determinative under the very different facts of this case.

In *Bessemer*, the petitioner sought to move its television station from Tuscaloosa, Alabama, to Bessemer, Alabama, arguing that the provision of first local transmission service to Bessemer, a community of 31,729 persons, was preferable to the existing second local transmission service in Tuscaloosa, a community of 75,211 persons. The Commission rejected this proposal, chiefly on the grounds that Bessemer was a suburb of a major metropolitan area, Birmingham. The Commission noted that Bessemer was less than 15 miles from downtown Birmingham, a community of 284,413 persons, was located within the Birmingham Standard Metropolitan Statistical Area, and was located within the Birmingham Urbanized Area as defined by the U.S. Census. Applying the well-settled *Huntington* doctrine,¹³ the Commission treated the application, not as a proposal to provide first local transmission service, but, rather, as a proposal to provide sixth local television transmission service to the Birmingham Urbanized Area.

In contrast to *Bessemer*, UNC seeks to reallocate the community of license of WUND from one rural community in northeastern North Carolina to another. In no way can the town of Edenton (population 5,394) or its surrounding area (Chowan County, population 14,526) be compared with

¹²(...continued)
at ¶ 14).

¹³ Under this doctrine, the Commission applies an exception to the Commission’s policy of awarding a first local service preference in those cases in which a first local service preference is claimed for a community contiguous to a larger central city. *See Bessemer*, at ¶¶ 11-13.

the Urbanized Area of Birmingham (population 284,413).¹⁴ Both the legal and public interest considerations attendant to these distinctions are as different as night and day.

Moreover, it was significant in *Bessemer* that “approval of the change in community of license would provide no additional reception service” and “requires removal of an existing second service from a significantly larger community.”¹⁵ Neither of these facts, of course, are present here. WUND’s change in community of license would only add television households able to receive the programming of UNC’s statewide television network (via satellite), while no household—not a single household—would lose WUND’s reception service. Also, contrary to *Bessemer*, the reallocation would not involve moving WUND’s community of license from a larger to a smaller community but would rather serve the allocation goals by moving the community of license to a larger community.

Accordingly, the holding in *Bessemer* is entirely consistent with grant of WUND’s Petition.

2. The Public Interest Benefits of the Petition Are Real and Tangible

Hampton Roads denigrates the public interest benefits of UNC’s Petition, stating:

UNC’s waiver showing rests on the notion that the community change would increase WUND-TV’s potential DBS subscriber base. However, at no time has the Commission interpreted “reception service” in this way, and for good reason: such an interpretation eliminates the distinction of free over-the-air broadcasting as a unique and valuable service separate from fee-based multichannel subscription services. Moreover, as noted by the Video Division in

¹⁴ Edenton is not, obviously, an Urbanized Area, nor in an Urbanized Area, nor even near an Urbanized Area.

¹⁵ *Bessemer*, at ¶ 14.

the NPRM, reliance on population gains attributable to WUND-TV's carriage on DBS is too speculative to be considered.¹⁶

In support of its argument that the gains to be achieved from satellite viewers in the Nine County Area are too “speculative” to be considered, Hampton Roads cites the *Pueblo, Colorado*, case. UNC explained in detail in its Comments the reasons *Pueblo* is inapposite, and Hampton Roads’ discussion of the case does nothing to explain the distinctions between that case and this one.¹⁷

It is simply not credible for Hampton Roads, whose offices and studios are in an adjacent state, some 70 miles (as-the-crow-flies) from Columbia, to trivialize the public interest benefits of the Petition when the *local* residents of the area and government officials in Columbia and Tyrrell County in which Columbia is located have concluded otherwise. They believe that grant of the Petition would, indeed, be beneficial to the surrounding area and, for that reason, actively support the Petition.

The Tyrrell County Board of Commissioners (the duly-elected governing body in the county where Columbia is located) filed comments (*see* Comments, Exhibit 6) stating:

The County Commissioners of Tyrrell County in which Columbia is located *do not view* this proposed change in the city of license of

¹⁶ Comments of Hampton Roads, at 5-6.

¹⁷ *See* UNC’s Comments, at 16-18. Notably, Hampton Roads cites *Pueblo, Colorado*’s application of the “compelling need” standard, a standard applicable in that case solely to the commercial station’s attempt to exchange its allotment for the short-spaced allotment assigned to the noncommercial station’s unbuilt construction permit. *Pueblo, Colorado*, at ¶ 25. That standard—which has no application in this case where no short-spaced allotment is requested—was not satisfied because, among other reasons, 23,012 persons would lose their only commercial and NBC network service and that loss was not outweighed by any service gains. In this regard, Hampton Roads’ suggestion that the *Pueblo, Colorado*, petition was rejected solely because of a failure to deliver some threshold number of additional viewers is inaccurate and misleading.

WUND *as an abandonment in any way of service* to the citizens of Columbia or Tyrrell County (emphases added).

The Tyrrell County Commissioners addressed the public interest benefits of the Petition, observing that grant of the Petition

will assure that thousands of citizens in our neighboring northeast counties will have access to UNC-TV network programming. This programming, *much of which consists of news, public affairs, cultural and educational programming about North Carolina*, is of great interest and importance to our northeast region and the citizens of the region.

The Commissioners went on to note that since the UNC-TV network is paid for and supported by taxpayers throughout our State “it is unfair that all citizens in the northeast region of the state cannot now receive their state public TV network by satellite.” The Commissioners concluded:

We think the change will further our regional efforts at economic development and make our region an even more attractive area in which to live and work.

And, just last week, the Town of Columbia, itself, adopted a Resolution supporting the Petition (*see Exhibit 8*). In recognition that Columbia’s interests are closely linked to the interests and welfare of the citizens in the surrounding rural area, Columbia’s duly-elected Board of Aldermen observed:

[N]o Town prospers when its leaders disregard the welfare and needs of the larger community surrounding and outside the Town’s boundaries.

The Aldermen added that thousands of viewers in northeastern North Carolina would “substantially benefit” from satellite reception of the “excellent programs broadcast by WUND for adults and children alike.” The Columbia Board of Aldermen supported the Petition “for the betterment of all citizens.”

These expressions of support are echoed by the previously filed letters of support from the County Commissions of Currituck, Dare, Pasquotank, and Perquimans Counties, and letters from the Town of Edenton and the County Managers from Gates and Hertford Counties (*see* Comments, Exhibit 6) as well as the subsequently filed letter of the County Manager of Chowan County (where Edenton is located) (*see* Exhibit 9).

This unqualified and unanimous support of the Petition from local Columbia, Tyrrell County, and surrounding counties' governing bodies came after open public meetings and discussion of the Petition. This local government support is in addition to the *1000-plus* supportive letters that area residents have submitted to the Commission. Attached to UNC's Petition in Annexes 1-3 were some 914 letters from citizens in WUND's viewing area; attached to these Reply Comments as Annexes 1-A to 3-A are some 333 additional letters of support, thereby bringing the total number of citizen letters supporting UNC's Petition to 1247. Surely, these local residents and their duly elected governing officials are in a better position to assess the "public interest" benefits of the Petition for Columbia, Tyrrell County, and the surrounding area than is Hampton Roads, an out-of-state station trying to preserve its monopoly service status.

3. Under Hampton Roads' Own Showing, Grant Of The Petition Is, In Fact, A Preferential Arrangement of Allotments

As demonstrated by UNC in its Petition and Comments, the proposed redesignation of WUND's community of license to Edenton will result in a preferential arrangement of allotments because it: (i) would constitute the first local television transmission service for a larger community (5,394 persons in Edenton versus 819 persons in Columbia); (ii) will not affect any current viewer's or subscriber's receipt of UNC-TV's service; (iii) will allow some 10,000 current subscribers of

satellite service in northeastern North Carolina access to UNC-TV's statewide noncommercial educational programming, including UNC-TV's programming specifically directed at North Carolina issues and concerns; (iv) will not result in a loss of program origination facilities in Columbia; and (v) will serve the allotment goals of widely disseminating television programming signals—in particular noncommercial educational programming. Hampton Roads does not refute these factual showings, and its own engineering analysis provides further support for the conclusion that the Petition will result in a preferential arrangement of allotments.

The engineering statement filed by Hampton Roads shows that the Greenville-Washington-New Bern DMA (“Greenville DMA”), WUND’s current DMA, not only has “ample transmission services,” but actually has *more* total television transmission services than the Norfolk DMA!¹⁸ Should the Commission examine the transmission services on a market-by-market basis, the redesignation of WUND’s community of license as Edenton in the Norfolk DMA would in no way disadvantage the Greenville DMA, the smaller DMA, as measured by the remaining transmission services.¹⁹

More importantly, in *Anchorage-Seward* and its *Sixth Report and Order on Television Allotments*, the Commission clearly stated that the preferred arrangement of noncommercial television allotments is to assure that approximately 25% of the television allotments in each market

¹⁸ Comments of Hampton Roads, at 5 n.14; *see also id.*, Engineering Statement of Joseph M. Davis, at 2.

¹⁹ While, as Hampton Roads notes, it is true that Edenton receives nine television stations while Columbia receives three, since UNC’s transmission facilities are not moving, reception service will change in neither community.

consist of noncommercial allotments.²⁰ Hampton Roads' own engineering data demonstrate that the redesignation of WUND's community of license to Edenton will provide the Norfolk and Greenville markets with an equal number of noncommercial educational television services and bring the total noncommercial television services more nearly into line with the Commission's preferred 25 % benchmark of noncommercial television channels. Since Edenton is located in "a substantially larger DMA"²¹ than Columbia, it would advance the Commission's allotment priorities for the "substantially larger DMA" to have at least as many noncommercial educational television stations as the adjacent smaller DMA. Grant of the Petition would accomplish precisely that, by reallocating one of the three UNC-TV network stations currently licensed to communities in the Greenville DMA to the Norfolk DMA, which currently has only one noncommercial educational television station, WHRO-TV. Specifically, if the Petition is granted, the percentage of noncommercial transmission services in the Greenville DMA would change from 30% (3/10) to 22% (2/9); the percentage in the Norfolk DMA would change from 11% (1/9) to 20% (2/10). This reallocation, under the principle articulated in *Anchorage-Seward* and the *Sixth Report and Order on Television Allotments*, represents a more equitable and preferable allotment of noncommercial stations between the two markets.

Hampton Roads has acknowledged that:

the Commission has noted that, given the saturation of television signals generally, the goal of ensuring widespread distribution of

²⁰ See, e.g., *Anchorage-Seward*, at ¶ 14 (citing *Sixth Report and Order on Television Allotments*, 41 FCC 148, 166 (1952)).

²¹ Comments of Hampton Roads, at 10.

facilities and transmission services is the only goal left to be accomplished.²²

With **three** (including WUND) of UNC's noncommercial educational television facilities licensed to communities in the Greenville DMA, Hampton Roads' observation makes clear that a redesignation of WUND to Edenton would advance the Commission's allotment goals since it would provide a more (quoting Hampton Roads) "widespread distribution of facilities and services." On this point, Hampton Roads and UNC plainly agree.²³

C. Hampton Roads' Arguments Regarding "Community" Do Not Alter The Fact That Columbia And Edenton, As Part Of The Same Region, Have A Strong Identity Of Interests That Supports The Proposed Reallocation

Hampton Roads goes to considerable length to address whether and to what extent Columbia, Edenton, or the Albemarle Sound region are "communities" for purposes of Section 307(b) of the Communications Act.²⁴ UNC's Petition clearly acknowledged that "Columbia and Edenton . . . each individually possess the indicia of 'community' for allotment purposes,"²⁵ and, thus, there is no dispute about that.

Contrary to Hampton Roads' argument, however, UNC's Petition did not suggest, as an essential element of the proposal to change the community of license, that the Albemarle Sound is

²² Comments of Hampton Roads, at 9.

²³ See UNC's Comments, at 30.

²⁴ See Comments of Hampton Roads, at 6-8.

²⁵ Petition, at 5.